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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-6425

IVAN V.,

Petitioner,

against

THE CITY OF NEW YORK

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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TABLE OF CONTENTS

PAGE

ARGUMENT—*In re Winship*, 397 U.S. 358 (1970), should not be applied retroactively to cases in the appellate process at the time it was decided 1

Conclusion 3

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The opinions below, the jurisdictional requisites, the estion presented, the reference to the constitutional pro-ions involved and the statement of the case are all ade-ately covered by the Petition and will, therefore, not be peated or restated.

ARGUMENT

***In re Winship*, 397 U.S. 358 (1970), should not be plied retroactively to cases in the appellate process the time it was decided.**

(1)

This Court has previously refused to review the same ue. In the case of *Matter of D. (Daniel)*, 27 N Y 2d 90, N. E. 2d 627 (1970), the New York Court of Appeals, upholding an adjudication of juvenile delinquency, ed that the *Winship* case should not be given retroac-e effect (27 N Y 2d at p. 96, 261 N. E. 2d at pp. 630-

631). That case was in the appellate process at the time *Winship* was decided. An appeal to this Court was dismissed for want of jurisdiction. This Court also stated that, treating the papers as a petition for writ of certiorari, certiorari was denied. *Daniel Richard D.* v. *County of Onandaga,* 403 U. S. 926 (1971). Two Justices were of the opinion that probable jurisdiction should be noted.

(2)

Although the *Winship* opinion rested heavily on *In re Gault,* 387 U. S. 1 (1967), nothing in that case so clearly foreshadowed *Winship* as to call for retroactive applicability on that ground. In fact, the *Gault* opinion did not deal with the issue of the quantum of proof even though that issue had been considered by the State court, the Arizona Supreme Court. This Court deliberately refused to consider the issue. It said (387 U. S. at pp. 10-11):

> "We shall not consider other issues which were passed upon by the Supreme Court of Arizona. We emphasize that we indicate no opinion as to whether the decision of that court with respect to such other issues does or does not conflict with requirements of the Federal Constitution."

Later in the opinion, Mr. Justice FORTAS referred to *Kent* v. *United States,* 383 U. S. 541 (1966), and quoted the following sentence from page 562 of that opinion (387 U. S. at p. 30):

> "We do not mean . . . to indicate that the hearing to be held must conform with all the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment."

In the next sentence of the *Gault* opinion he stated that this view was being reiterated.

(3)

It is true that this Court has frequently stated that retroactive effect should be given where the purpose of a new constitutional principle is to enhance the truth-finding function. Those rulings, however, relate to criminal trials. Here we are dealing, not with a criminal trial, but with a juvenile delinquency proceeding. While this Court has applied some of the protections afforded in criminal cases to such proceedings, it has not applied a general rule that all the protection available in a criminal trial must be provided in a delinquency proceeding. It is respectfully submitted that the rule governing retroactivity in criminal cases should not be applied with full rigidity to juvenile delinquency proceedings.

CONCLUSION

The petition for a writ of certiorari should be denied.

April 26, 1972.

Respectfully submitted,

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Corporation Counsel of the
City of New York,
Attorney for Respondent.

Stanley Buchsbaum,
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IVAN V. *v.* CITY OF NEW YORK

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT

No. 71-6425. Decided June 12, 1972

In re Winship, 397 U. S. 358, which held that proof beyond a reasonable doubt is essential to due process at the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult, must be given fully retroactive effect.

Certiorari granted; 37 App. Div. 2d 822, 324 N. Y. S. 2d 934, reversed and remanded.

PER CURIAM.

The Court held in *In re Winship*, 397 U. S. 358, decided March 31, 1970, that proof beyond a reasonable doubt is among the essentials of due process and fair treatment that must be afforded at the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult. In this case, on January 6, 1970, before *Winship* was decided, petitioner was adjudged a delinquent in the Family Court of Bronx County, New York, on a finding, based on the preponderance-of-evidence standard, that, at knifepoint, he forcibly took a bicycle from another boy, an act that, if done by an adult, would constitute the crime of robbery in the first degree. On direct appeal, the Appellate Division, First Department, reversed on the ground that *Winship* should be retroactively applied to all cases still in the appellate process, 35 App. Div. 2d 806, 316 N. Y. S. 2d 568 (1970). The New York Court of Appeals reversed the Appellate Division, holding that *Winship* was not to be applied retroactively, 29 N. Y. 2d 583,

272 N. E. 2d 895 (1971).* On remand, the Appellate Division thereupon affirmed the delinquency adjudication, 37 App. Div. 2d 822, 324 N. Y. S. 2d 934 (1971), and the Court of Appeals denied leave to appeal from that affirmance, 29 N. Y. 2d 489 (1972). We disagree with the holding of the Court of Appeals that *Winship* is not to be applied retroactively.

"Where the major purpose of new constitutional doctrine is to overcome an aspect of the criminal trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect. "Neither good-faith reliance by state or federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice has sufficed to require prospective application in these circumstances." *Williams* v. *United States*, 401 U. S. 646, 653 (1971); see *Adams* v. *Illinois*, 405 U. S. 278, 280 (1972); *Roberts* v. *Russell*, 392 U. S. 293, 295 (1968).

Winship expressly held that the reasonable-doubt standard "is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law' . . . . 'Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of

*The Court of Appeals followed *Matter of D.*, 27 N. Y. 2d 90, 261 N. E. 2d 627 (1970), where *Winship* was said not to be retroactive but that even if it were, appellant there had waived the claim when he entered a guilty plea to the charges. In that circumstance this Court dismissed an appeal and denied certiorari in that case. *D. v. County of Onandaga*, 403 U. S. 926 (1971).

his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.'" 397 U. S., at 363–364.

Plainly, then, the major purpose of the constitutional standard of proof beyond a reasonable doubt announced in *Winship* was to overcome an aspect of a criminal trial that substantially impairs the truth-finding function, and *Winship* is thus to be given complete retroactive effect. The motion for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the Appellate Division of the Supreme Court of New York, First Department, is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.